
1997 Wis Eth Bd 12
LOBBYING AND LOBBYISTS; MEALS, LODGING, TRAVEL AND
ENTERTAINMENT

The Ethics Board advises:

A lobbying organization may, consistent with the Ethics Code and lobbying law, furnish food and drink to state officials at a reception if:

- (1) the organization can demonstrate its genuine attempt to attract the general public to the reception;
- (2) the reception is open to the public on the same terms it is available to state officials without the purpose or effect of the manner of invitation conferring an advantage on a state official greater than that available to the general public; and
- (3) either: (a) the organization sets and collects from each state official the greater of: [i] the established charge or ticket price, if any, charged others for the same or comparable benefit , [ii] the organization's cost of acquiring the goods or services the organization provides, or [iii] the market price of the recipient's independently acquiring like benefits; or (b) the reception is unrelated to state officials' discussion of state government processes or issues initiated by or affecting state government. (October 8, 1997)

Facts

¶ 1. This opinion is based upon these understandings:

- a. You write on behalf a registered lobbying principal in Wisconsin.
- b. The organization is planning a reception at the Capitol.
- c. The reception will be open to the public at what you have characterized as a "nominal" cost of \$5 per person.
- d. The organization plans to invite the public to the reception through press releases to 530 state newspapers, radio stations, and television stations.
- e. The organization also plans to purchase an advertisement in the *Wisconsin State Journal*, the newspaper with the largest daily circulation in Madison, Wisconsin, the site of the reception.

- f. The organization will provide to state legislators and other state officials the same information it provides to the public.

Questions

- ¶ 2. The Ethics Board understands your question to be:

May legislators and other state officials, consistent with laws administered by the Ethics Board, attend and partake of food and drink at the reception the organization has planned?

Discussion

¶ 3. A state official may attend the organization's reception without restriction from laws administered by the Ethics Board. The issue is whether an official may partake of food and drink the organization offers at the reception. Because the organization employs a lobbyist, our analysis necessarily involves both the statute specifically addressing a lobbying principal's furnishing food and drink to a state government official and the more general statutes that address a state official's accepting food and drink from any organization.

¶ 4. The upshot of the analysis is that if the organization furnishes food and drink to the general public for reasons unrelated to and independent of any of the recipients holding a state government position, then, consistent with statutes we administer, the organization may furnish food and drink and a state government official, present only as a member of the public and not because of government position, may partake of the principal's offer.

In the paragraphs that follow we explain our analysis.

LOBBYING LAW CONSIDERATIONS:

CHAPTER 13, WISCONSIN STATUTES

¶ 5. Because the organization is an organization that employs a lobbyist, we first consider the lobbying law. Reduced to its elements section 13.625 (1)(b) and (2), *Wisconsin Statutes*, provides:

But for the furnishing of something that is also made available to
the general public,
No lobbying principal
May furnish food or drink

To an elective state official or to an agency official.¹

Section 13.625 makes no allowance for an official's accepting items of pecuniary value from a principal even if the official furnishes something of equal value in return.²

¶ 6. The Attorney General has spoken to this very issue and his response is unequivocal:

[There] is persuasive evidence that the Legislature wanted to prohibit the furnishing of a thing of pecuniary value even if something of pecuniary value was furnished in return.

* * *

As you note in your request, if the statute were interpreted as permitting the acceptance of items in exchange for fair value, the Ethics Board would need to determine the fair market value of goods or services exchanged. . . . The potential for abuse inherent in that interpretation is obviated by giving the statute its common and ordinary interpretation. I conclude, therefore, that the prohibition on furnishing things of pecuniary value also prohibits the sale of such things to or purchase of such things from state officials.

80 Op. Att'y Gen. 205 (1992).³

¹ Section 13.625(1)(b) and (2), *Wisconsin Statutes*, in relevant part, provide:

13.625 Prohibited practices. (1) No lobbyist may:

(b) Furnish to any agency official or legislative employe of the state or to any elective state official or candidate for an elective state office, or to the official's, employe's or candidate's personal campaign committee:

1. Lodging.
2. Transportation.
3. Food, meals, beverages, money or any other thing of pecuniary value, except that a lobbyist may make a campaign contribution to a partisan elective state official or candidate for national, state or local office or to the official's or candidate's personal campaign committee; but a lobbyist may make a contribution to which par. (c) applies only as authorized in par. (c).

(2) No principal may engage in the practices prohibited under sub. (1) (b) and (c). This subsection does not apply to the furnishing of transportation, lodging, food, meals, beverages or any other thing of pecuniary value which is also made available to the general public.

² 80 Op. Att'y Gen. 205 (1992); 1996 Wis Eth Bd 7 ¶4; 1996 Wis Eth Bd 1¶4; 1992 Wis Eth Bd 5 ¶4; 1991 Wis Eth Bd 3 ¶6.

³ Cited with approval at 1996 Wis Eth Bd 8 ¶5.

¶ 7. Thus, section 13.625 of the statutes is an absolute bar to the course you have asked unless the organization's offer of food and drink to an official is also made available to the general public.

¶ 8. In interpreting the meaning of that phrase, the Attorney General has said:

[S]omething is available to the general public if:

1. It is available to anyone who wants it and who meets the criteria for eligibility;
2. The criteria are: (a) established and readily identifiable; and (b) drawn without the purpose or effect of giving a preference to or conferring an advantage upon an agency official, legislative employe or elective state official; and
3. There is no offer or notice of availability directed to an agency official, legislative employe or elective state official with the effect of conferring an advantage not also given others who meet the criteria.⁴

80 Op. Att'y Gen. 205, 212-13 (1992).

¶ 9. Thus, if the event you have asked about has the purpose or effect of conferring an advantage on a state government official greater than the benefit the organization affords any member of the general public, then the organization should not proceed with this plan.

¶ 10. If the reception you have asked about is genuinely targeted for the general public without the purpose or effect of conferring an advantage on a state official, then your proposal is consistent with Wisconsin's lobbying law and we must look next at the application of the more general statute that addresses a state government official's receipt of food and drink.

*STANDARDS OF CONDUCT FOR STATE GOVERNMENT OFFICIALS:
CHAPTER 19, WISCONSIN STATUTES*

¶ 11. Pertinent to your inquiry is section 19.45(3m), which, reduced to its elements, provides:

⁴Section 13.625 (2) which establishes an exception for items "available to the general public" and section 19.56 (3)(b) which establishes an exception for a payment that "is unrelated to and did not arise from the recipient's holding a public office" may often have a similar or identical effect even though the latter exception is both narrower and places upon the recipient the burden of demonstrating that the exception is met.

No state public official
May accept
Food or beverage
Except in accordance with section 19.56(3), *Wisconsin Statutes*.⁵

¶ 12. Your inquiry is with respect to state public officials and asks specifically about food and beverage. If “accept” were synonymous with “receive”, section 19.45 (3m) would be an obstacle to the organization’s plans to offer food and drink to a state public official, even if the official paid for the food and drink.

¶ 13. But the terms are not synonymous. In interpreting the meaning of the word “accept,” the Attorney General stated:

The legislative history of section 19.45(3m) indicates that the word “accept” was intended to apply only to receiving gifts. . . . Section 19.56(1) encourages public officials to meet with groups to discuss matters before the Legislature. It would make no sense to encourage officials to attend those functions but prohibit them from purchasing refreshments at the functions.

80 Op. Att’y Gen. 201, 202-03 (1992). The Attorney General concluded that

[A] state public official may purchase items and services from an organization, other than a lobbying principal, if the opportunity to purchase the items or services is not itself something of substantial value.

Id., at 201.

¶ 14. Thus, if the organization sets and collects from each state official the greater of: [i] the established charge or ticket price, if any, charged others for the same or comparable benefit , [ii] the organization’s cost of acquiring the goods or services the organization provides, or [iii] the market price of the recipient’s independently acquiring like benefits, then section 19.45 (3m) will not bar a state official’s partaking of food and drink the organization offers.

⁵ Section 19.45(3m), *Wisconsin Statutes*, provides:

19.45(3m) No state public official may accept or retain any transportation, lodging, meals, food or beverage, or reimbursement therefor, except in accordance with s. 19.56(3).

¶ 15. If a state public official has not paid the cost of refreshments just described, then section 19.45 (3m) forbids the official to partake of food or drink the organization provides unless a specific exception applies.

¶ 16. The only exception to §19.45(3m) that might conceivably be pertinent to your question is found at §19.56(3)(b), *Wisconsin Statutes*. Reduced to its elements the relevant portion of that paragraph provides:

A state public official
May receive anything of value
If the official can show by clear and convincing evidence
That the payment⁶ is unrelated to and did not arise from the
recipient's holding a public office⁷ and
Was paid for a purpose unrelated to the state official's discussion
of state government processes or of issues initiated by or
affecting state government.⁸

¶ 17. Whether a state official could demonstrate that his or her attendance at the reception were unrelated to holding public office or whether the reception is a meeting to discuss issues involving state government are largely matters of fact. Although we do not prejudge and remain open to the evidence as we find it, it seems likely that a state government official will be able to demonstrate that the official enjoyed the organization's hospitality for a reason *unrelated* to the official's holding a public office if the organization makes a genuine attempt to attract the general public to the

⁶ "Payment" refers to the Organization's direct payment for food and drink for an official as well as the Organization's reimbursement of an official for the official's purchase of food and drink.

⁷ Section 19.56(3)(b), *Wisconsin Statutes*, provides:

19.56(3)(b) A state public official may receive and retain anything of value if the activity or occasion for which it is given is unrelated to the official's use of the state's time, facilities, services or supplies not generally available to all citizens of this state and the official can show by clear and convincing evidence that the payment or reimbursement was unrelated to and did not arise from the recipient's holding or having held a public office and was paid for a purpose unrelated to the purposes specified in sub. (1).

⁸ See preceding footnote and § 19.56(1), *Wisconsin Statutes*, which provides:

19.56(1) Every state public official is encouraged to meet with clubs, conventions, special interest groups, political groups and other gatherings to discuss and to interpret legislative, administrative, executive, or judicial processes and proposals and issues initiated by or affecting a department or the judicial branch.

event on like terms without the purpose or effect of giving a preference to or conferring an advantage upon a state government official.

Advice

¶ 18. The Ethics Board advises:

A lobbying organization may, consistent with the Ethics Code and lobbying law, furnish food and drink to state officials at a reception if:

- (1) the organization can demonstrate its genuine attempt to attract the general public to the reception;
- (2) the reception is open to the public on the same terms it is available to state officials without the purpose or effect of the manner of invitation conferring an advantage on a state official greater than that available to the general public; and
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